

RECORDATION NO. 8385-E Filed & Recorded
OCT 15 1976 11 55 AM
INTERSTATE COMMERCE COMMISSION



RECORDATION NO. 8385-F Filed & Recorded
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INTERSTATE COMMERCE COMMISSION

October 13, 1976

The Honorable Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RE: Conditional Sale Agreement made as of June 22,
1976, filed with the ICC on June 28, 1976, at
11:20 a.m. and assigned recordation number 8385.

Dear Mr. Oswald:

Enclosed for filing with the Interstate Commerce Commission
are ten executed Counterparts of the following:

- (1) An Assignment of Sublease dated as of June 22, 1976,
assigning to First Security Bank of Utah, N.A., 79
South Main Street, Salt Lake City, Utah, 84110, a
national banking association, not in its individual
capacity but acting solely as trustee under a Trust
Agreement dated as of June 22, 1976 with FMC
Finance Corporation, 200 East Randolph Drive,
Chicago, Illinois, 60601 (the "Trustee"), SSI Rail
Corp.'s interest in its lease of railroad equipment
with the Apache Railway Company dated June 1,
1976, as and only to the extent that such lease re-
lates to the below referenced boxcars (the "Sublease").
A copy of the Sublease is attached to the Assignment.
- (2) A Subsequent Assignment of Sublease dated as of
July 30, 1976, assigning to Manufacturer's Hanover
Trust Company, 350 Park Avenue, New York, New
York, 10022, the Trustee's interest in the Sublease.

.../2

Counterpart since W. Thornhill

Mr. Oswald

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The above documents cover the following railroad equipment with the A.A.R. mechanical designation of "XM."

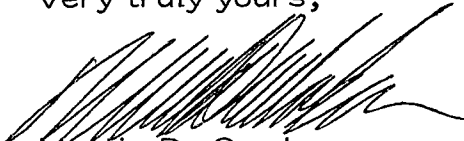
- 100 70-ton boxcars built by FMC Corporation and numbered APA 1850 through 1949 inclusive.
- 100 100-ton boxcars built by FMC Corporation and numbered APA 1700 through 1799 inclusive.

Each boxcar is plainly, distinctly, permanently and conspicuously marked on each side in letters not less than one inch in height as follows: "Owned by a Company under a Security Agreement filed under the Interstate Commerce Act, Section 20."

Also enclosed is SSI's check in the sum of \$20.00, payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document.

Please return all additional copies of the enclosed counterparts not required by the Interstate Commerce Commission to Allen H. Harrison, Jr. of Wilmer, Cutler & Pickering, who will be delivering this letter on our behalf.

Very truly yours,



Martin D. Goodman
Secretary

MDG:md
Enc.

OCT 1 5 1976 11 50 AM

SUBSEQUENT ASSIGNMENT OF SUBLEASE INTERSTATE COMMERCE COMMISSION

ASSIGNMENT dated as of July 30, 1976 by FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 with FMC Finance Corporation (said bank, so acting, being hereinafter called "Assignor"), to MANUFACTURERS HANOVER TRUST COMPANY, a New York banking corporation (hereinafter called "Assignee").

W I T N E S S E T H :

WHEREAS, FMC Corporation (hereinafter called "Builder") and Assignor have entered into a Conditional Sale Agreement dated as of June 22, 1976, as amended and restated as of the date hereof (said Agreement, as so amended and restated, being hereinafter called the "Conditional Sale Agreement"), providing for the construction, sale and delivery by Builder to Assignor and the purchase by Assignor from Builder of 200 railroad boxcars (hereinafter called the "Equipment"); and

WHEREAS, Assignor and SSI Rail Corp. (hereinafter called "Lessee") have entered into a Lease of Railroad Equipment dated as of June 22, 1976 (hereinafter called the "Lease"); providing for the lease of the Equipment by Assignor to Lessee; and

WHEREAS, Lessee and The Apache Railway Co. (hereinafter called "Sublessee") have entered into a Lease Agreement dated as of June 1, 1976 (hereinafter called the "Sublease"), providing for the initial leasing of 250 railroad boxcars, including the 200 boxcars comprising the Equipment, by Lessee to Sublessee; and

WHEREAS, Lessee has entered into an Assignment of Sublease dated as of June 22, 1976 (hereinafter called the "Assignment of Sublease"), providing for the assignment by Lessee to Assignor of certain of the rights of Lessee under the Sublease; and

WHEREAS, Builder and Assignee are entering into an Agreement and Assignment of even date herewith (hereinafter called the "Agreement and Assignment"), providing for the assignment by Builder to Assignee of certain of the rights of Builder under the Conditional Sale Agreement; and

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SUBSEQUENT ASSIGNMENT OF SUBLEASE INTERSTATE COMMERCE COMMISSION

ASSIGNMENT dated as of July 30, 1976 by FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 with FMC Finance Corporation (said bank, so acting, being hereinafter called "Assignor"), to MANUFACTURERS HANOVER TRUST COMPANY, a New York banking corporation (hereinafter called "Assignee").

W I T N E S S E T H :

WHEREAS, FMC Corporation (hereinafter called "Builder") and Assignor have entered into a Conditional Sale Agreement dated as of June 22, 1976, as amended and restated as of the date hereof (said Agreement, as so amended and restated, being hereinafter called the "Conditional Sale Agreement"), providing for the construction, sale and delivery by Builder to Assignor and the purchase by Assignor from Builder of 200 railroad boxcars (hereinafter called the "Equipment"); and

WHEREAS, Assignor and SSI Rail Corp. (hereinafter called "Lessee") have entered into a Lease of Railroad Equipment dated as of June 22, 1976 (hereinafter called the "Lease"); providing for the lease of the Equipment by Assignor to Lessee; and

WHEREAS, Lessee and The Apache Railway Co. (hereinafter called "Sublessee") have entered into a Lease Agreement dated as of June 1, 1976 (hereinafter called the "Sublease"), providing for the initial leasing of 250 railroad boxcars, including the 200 boxcars comprising the Equipment, by Lessee to Sublessee; and

WHEREAS, Lessee has entered into an Assignment of Sublease dated as of June 22, 1976 (hereinafter called the "Assignment of Sublease"), providing for the assignment by Lessee to Assignor of certain of the rights of Lessee under the Sublease; and

WHEREAS, Builder and Assignee are entering into an Agreement and Assignment of even date herewith (hereinafter called the "Agreement and Assignment"), providing for the assignment by Builder to Assignee of certain of the rights of Builder under the Conditional Sale Agreement; and

WHEREAS, Assignee's obligation to execute and deliver the Agreement and Assignment and to pay Builder the consideration therefor is conditioned upon, among other things, the execution and delivery by Assignor of this Assignment;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby sell, assign, transfer and set over to Assignee and its successors and assigns all the right, title and interest of Assignor in, to and under, and does hereby grant to Assignee and its successors and assigns a security interest in, (i) the Assignment of Sublease and (ii) the Collateral (as defined in the Assignment of Sublease).

1. This Assignment is given as collateral security for the payment by Assignor to Assignee of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) together with interest thereon and all other amounts payable by Assignor under the Conditional Sale Agreement and the performance by Assignor of all of its obligations contained therein (all of such amounts and obligations being herein collectively called the "Obligations"), and all moneys received by Assignee pursuant to the terms of this Assignment (whether from Sublessee, Assignor, Lessee or otherwise) shall be applied to the payment of the Obligations as and when they become due and payable, whether by maturity, prepayment, acceleration or otherwise.

2. Assignor hereby irrevocably authorizes Assignee, at Assignee's discretion and upon the occurrence of an Event of Default under the Lease, to direct Sublessee during the continuance of such Event of Default to pay all rent and all other amounts due or to become due under or in connection with the Sublease, to the extent assigned by Lessee under the Assignment of Sublease, directly to Assignee or to such other person as Assignee may from time to time designate in writing.

3. Assignor hereby represents and warrants to Assignee that (i) Assignor has not heretofore assigned or otherwise disposed of or encumbered any of its right, title or interest in, to or under the Assignment of Sublease or any moneys due or to become due thereunder or by reason thereof; and (ii) Assignor has full right, power and authority

to transfer to Assignee absolute title to Assignor's right, title and interest in, to and under the Assignment of Sublease and in and to all such moneys.

4. Assignor hereby covenants that it will not, without the prior written consent of Assignee, amend, modify or otherwise change any term of the Assignment of Sublease.

5. Assignor further covenants that it will not, so long as this Assignment shall remain in effect, create or permit to exist any lien, pledge, assignment, charge, encumbrance or security interest on or with respect to any of the rights and interests hereby assigned by it, except in favor of Assignee, its successors or assigns.

6. Assignor hereby, but effective only upon the occurrence of a Default under the Conditional Sale Agreement, constitutes Assignee and its successors and assigns Assignor's true and lawful attorneys, irrevocably, with full power and authority (in the name of the Assignor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all moneys and any and all claims for moneys due and to become due at any time under, or arising out of, the Assignment of Sublease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which Assignee may deem to be necessary or advisable in the premises.

7. Assignor agrees that at any time and from time to time, upon the written request of Assignee, Assignor will promptly and duly execute, deliver and record or file any and all such further instruments and documents as Assignor may reasonably request in order to obtain the full benefits of this Assignment and of the rights and powers herein granted, including, without limitation, the execution, delivery and filing of financing statements under the Uniform Commercial Code in such jurisdictions as Assignee may now or hereafter from time to time request. Assignor hereby also authorizes Assignee to file any such financing statements without the signature of Assignor to the extent permitted by applicable law.

8. All rights, powers and remedies granted to Assignee hereunder and under the Conditional Sale Agreement shall be cumulative, may be exercised singly or concurrently

and shall not be exclusive of any rights or remedies provided by law. This Assignment may not be changed orally and shall be governed by and construed and interpreted in accordance with the laws of the State of New York.

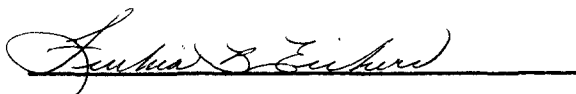
IN WITNESS WHEREOF, the undersigned has caused these presents to be properly executed as of the day and year first above written.

FIRST SECURITY BANK OF UTAH, N.A.,
not in its individual capacity
but acting solely as trustee
under a Trust Agreement dated
as of June 22, 1976 with FMC
Finance Corporation

[Corporate Seal]

By 

Attest:



STATE OF UTAH)
 : SS.:
COUNTY OF SALT LAKE)

On this 6 day of August, 1976, before me personally appeared Robert S. Clark, to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Bonnie J. Olsen
Notary Public

[Notarial Seal]

My Commission Expires: 11-18-79

CONSENTS TO SUBSEQUENT ASSIGNMENT OF SUBLEASE

The undersigned, SSI RAIL CORP., hereby acknowledges notice of and consents to the foregoing Subsequent Assignment of Sublease and agrees that if, during the continuance of an Event of Default under the Lease referred to in said Assignment, it shall receive any payments under or in connection with the Sublease referred to in said Assignment or any moneys otherwise assigned thereunder, such payments shall be held by it in trust for Assignee, shall be segregated from its other funds and shall, forthwith upon receipt by it, be turned over to Assignee or an agent thereof in the same form as received by it (except for its endorsement when required), and further agrees that it will not seek to recover from said Assignee for any reason whatsoever any moneys paid to it by virtue of said Assignment and this Consent.

Dated: July 30, 1976

[Corporate Seal]

SSI RAIL CORP.

Attest:

By 

The undersigned, THE APACHE RAILWAY CO., hereby acknowledges notice of and consents to the foregoing Subsequent Assignment of Sublease and agrees that (1) upon being directed so to do by the Assignee thereunder, it will make payment of all moneys due and to become due from it under or in connection with the Sublease referred to in said Assignment, as and to the extent that such moneys are assigned thereby, directly to said Assignee or to such other person as said Assignee may from time to time designate to the undersigned in writing, and (2) each such payment shall be final, and the undersigned will not seek to recover from said Assignee for any reason whatsoever any moneys paid to it by virtue of said Assignment and this Consent.

Dated: August , 1976

THE APACHE RAILWAY CO.

[Corporate Seal]

By _____

Attest:

STATE OF CALIFORNIA

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SS.:

(

On this 4th day of August, 1976, before me personally appeared Patrick B. McManus, to me personally known, who, being by me duly sworn, says that he is the President of SSI RAIL CORP., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Terry L Russell
Notary Public

My Commission Expires:



STATE OF ARIZONA

COUNTY OF

: SS. :

On this day of , 1976, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the President of THE APACHE RAILWAY CO., that one of the seals affixed to the foregoing instrument, is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Notary Public

My Commission Expires:

CONSENT TO SUBSEQUENT ASSIGNMENT OF SUBLEASE

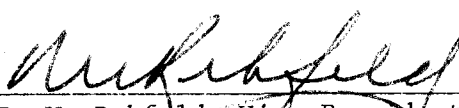
The undersigned, The Apache Railway Co. ("Apache"), hereby acknowledges notice of and consents to the foregoing Subsequent Assignment of Sublease and agrees that upon receipt of written direction from the Assignee thereunder so to do, it will make payment of moneys due and to become due from it under or in connection with the Sublease referred to in said Subsequent Assignment of Sublease, as and to the extent that such moneys are assigned thereby, directly to said Assignee or to such other person as said Assignee may from time to time designate to Apache in writing; provided that, the foregoing consent and agreement is given and made upon the express condition that none of the rights or interests of Apache under, pursuant to or in connection with said Sublease shall be affected in any manner by, nor shall SSI Rail Corp. be released or relieved of or from any of its duties or obligations under said Sublease as a result of, the Subsequent Assignment of Sublease or the above consent and agreement.

Dated: August 31, 1976

THE APACHE RAILWAY CO.

[Corporate Seal]

By


R. W. Rehfeld, Vice President

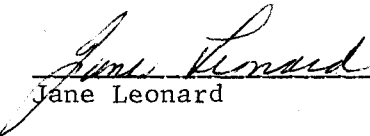
ATTEST:



R. P. Elder, Assistant Secretary

STATE OF ARIZONA)
 : ss.:
COUNTY OF MARICOPA)

On this 31st day of August, 1976, before me personally appeared R. W. Rehfeld, to me personally know, who, being by me duly sworn, says that he is the Vice President of THE APACHE RAILWAY CO., that one of the seals affixed to the foregoing instrument, is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Jane Leonard

(Notarial Seal)

My Commission Expires October 21, 1979.